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Supreme Court, U.S.
FILED
NOV 12 1996
CLERK

NO. 96-639

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1996

DAVID KISSI,

Petitioner

vs.

GREAT AMERICAN INSURANCE COMPANIES,

Respondent

On Petition for Writ of Certiorari
to the Maryland Court of Appeals

RESPONDENT'S BRIEF IN OPPOSITION

JOHN M. QUINN
QUINN, McAULIFFE & ROWAN
204 Monroe Street
Suite 109
Rockville, MD 20850
(301) 762-1696

10 pp

LIST OF INTERESTED PARTIES

The Petitioner is David Kissi, t/a DK & R Company.

The Respondent is Great American Insurance Company. John M. Quinn is counsel of record for the Respondent.

TABLE OF CONTENTS

LIST OF INTERESTED PARTIES 2

TABLE OF CONTENTS 3

TABLE OF CITATIONS 3

STATEMENT OF JURISDICTION 4

STATEMENT OF THE CASE 5

ARGUMENT IN OPPOSITION TO WRIT

I. ISSUES RAISED BY PETITIONER ARE NOT PROPER BASIS FOR A WRIT 7

II. DUE PROCESS IS NOT IMPLICATED 8

CONCLUSION 9

TABLE OF CITATIONS

Moss v. Director, Patuxent Institute, 32 Md.App. 66, 359 A.2d 236, reversed 279 Md.561, 369 A.2d 1011 (1976) 7

Vonoppenfeld v. State, 53 Md.App. 462, 454 A.2d 402 (1983) 6

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RESPONDENTS' BRIEF IN OPPOSITION

Respondent requests that the Court deny the petition for writ of certiorari seeking review of decisions of the Maryland Courts of Appeal. Initially, it is hard for the Respondent to respond to some of the arguments presented by the Petitioner, as the Respondent has no idea to what the Petitioner is referring.

STATEMENT OF JURISDICTION

It is the contention of the Respondent that the Court does not have

jurisdiction to hear this matter as no Fourteenth (14th) Amendment Right, nor any other federal question, was implicated or infringed upon by the actions of the Court of Special Appeals or the Court of Appeals of Maryland.

STATEMENT OF THE CASE

Petitioner states in his statement of the case that the Maryland Court of Special Appeals dismissed his appeal "claiming that the Petitioner's Brief was trash." The Maryland Court of Special Appeals did dismiss his appeal, however there was never any allegation, claim, or finding that his Brief was "trash". Rather, the Court of Special Appeals dismissed the appeal because the Petitioner, despite repeated prompting, explicit instructions, and numerous opportunities, could not file a brief which was in conformity with the procedural rules of the Maryland Courts. The issues, and their question of their validity, in Petitioner's Appeal were never heard because Petitioner never filed a proper brief.

This case involved a suit by the Petitioner, David Kissi, acting pro se, against the Respondent, Great American Insurance Companies, in the Circuit Court for Montgomery County, Maryland. This case was a bench trial on May 3, 1995, in front of the Honorable William M. Cave of the Circuit Court for Montgomery County. After listening to all the evidence presented by the plaintiff, Judge Cave properly ruled that the Petitioner had not complied with the terms of his contract and directed a verdict in favor of the Respondent without reaching other issues raised by the Respondent.

The Petitioner timely noted an appeal to the Court of Special Appeals. The

Petitioner initially filed his brief, which Brief failed to conform to the Court rules regarding time, style, form, and content, prior to receipt of the Scheduling Order. The Court of Special Appeals then issued a Scheduling Order. The Court of Special Appeals on October 27, 1995, per Judge Wilner and acting on its own motion, ordered the Petitioner to file a proper brief and record extract in compliance with the Maryland Rules. The Court ordered specific compliance with Rule 8-501 of the Maryland Rules of Procedure, and the new brief and extract to be filed by November 17, 1995.

On November 8, 1995, Petitioner filed a new brief which was still not in compliance with the requirements of the Maryland Rules. Rather than dismissing the case at this point, which was requested by the Respondent in their Motion to Dismiss filed on December 5, 1995, the Court of Special Appeals issued a second Order, dated December 5, 1995, again on its own initiative, directing the Petitioner to file a proper brief by January 3, 1996. The Court even went to the step of stating explicitly the corrections which needed to be made.

The Petitioner filed another Brief with the Court on December 22, 1995, which, despite the Court's instruction, still did not comply with the Maryland Rules. When the Petitioner did not file a proper Brief with the Court by January 3, 1996, the Court dismissed his appeal on January 26, 1996. The Petitioner filed a Motion for Reconsideration on January 31, 1996, which was similarly denied by the Court on February 27, 1996.

Finally, the Petitioner filed a Petition for Writ of Certiorari to the Maryland Court of Appeals on the ground that the defects in his brief related more to style

than substance and that his due process rights had been abridged by the Maryland Court of Special Appeals in dismissing his brief. The Court of Appeals of Maryland denied the petition on the grounds that there was no showing that review by certiorari was desirable or in the public interest.

ARGUMENT IN OPPOSITION TO THE WRIT

I. ISSUES RAISED BY PETITIONER ARE NOT PROPER BASIS FOR A WRIT

It is the questionable power of a Court to decide an issue, not whether the Court decided the issue improperly, that gives rise to the power to issue a writ of certiorari to that Court. Vonoppenfeld v. State, 53 Md.App. 462, 454 A.2d 402 (1983). The Maryland Court of Special Appeals, per Rule 8-501, et seq. of the Maryland Rules of Procedure, has the explicit power to dismiss an appeal for failure to comply with the Court rules and requirements.

The Petitioner, despite explicit instruction from the Court and numerous extensions of time requirements, could not and did not file a proper brief on time. The Maryland Court of Special Appeals attempted to give the Petitioner every opportunity to file a proper Brief. In fact the Court, as did the trial court, to use Petitioner's own words, "bent over backwards" to help the Petitioner. In Orders dated October 27, 1995, and December 5, 1995, the Court gave the Petitioner his opportunities at the plate. When the Petitioner failed to file a proper brief by January 3, 1996, the Court issued Order three (dated January 26, 1996) and the Petitioner's appeal was dismissed.

If the Court had dismissed his appeal simply because it did not like the style with which he wrote or the grammar he used, then there exists a better argument that such action may infringe upon due process rights and be of consideration for a writ. This is not the case as the substance and the argument itself in the brief, however written, was never reached. The Petitioner did not follow the Rules of Procedure or continual Orders and instructions from the Court. The Rules of Procedure apply to all parties, even pro se parties, in all appearances before the Court, be it filing a motion or arguing on appeal. When the Petitioner did not follow these, it was within the Court's power to dismiss the appeal and the Court properly did so.

II. DUE PROCESS IS NOT IMPLICATED

The purpose of due process is to assure basic fairness of procedure. Moss v. Director, Patuxent Institute, 32 Md.App. 66, 359 A.2d 236, reversed 279 Md.561, 369 A.2d 1011 (1976). Implicit in the concept of fairness of procedure is application of the Court's Rules in the same manner to all parties. The Courts of Maryland did all they could to give Petitioner an opportunity to present his case and file a proper Brief. The decision of a Court to dismiss this case for failure to follow the Rules of the Court and the deadlines set by the Court, when they have been explicitly and repeatedly told to the Petitioner, does not implicate a Due Process right which is protected by either the Maryland or United States Constitution.

CONCLUSION

The action taken by the Appellate Courts of Maryland in dismissing the appeal for failure to follow the Rules of Procedure, and denying Petitioner's Petition for Writ of Certiorari, was in conformity with the Rules and the correct decision. There is no due process right implicated by the Maryland Court of Special Appeals' decision to dismiss for failure to follow the known rules of the Court. There is no reason to issue a writ in this case and the decision of the Maryland Courts of Appeal should not be disturbed. The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

JOHN M. QUINN
Counsel for Respondent
QUINN, McAULIFFE & ROWAN
204 Monroe Street
Suite 109
Rockville, MD 20850
(301) 762-1696